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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/777,932	02/12/2004	Joe W. Anderson		5486

7590 05/26/2005
Christopher J. Riedl
c/o Performance Development Corporation
109 Jefferson Avenue
Oak Ridge, TN 37830

EXAMINER

STRIMBU, GREGORY J

ART UNIT	PAPER NUMBER
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3634

DATE MAILED: 05/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/777,932	Applicant(s) ANDERSON ET AL.	
	Examiner Gregory J. Strimbu	Art Unit 3634	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment: See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-4 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 February 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____ |

Information Disclosure Statement

The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609 A(1) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

Drawings

The drawings are objected to because the drawings include superfluous lettering. For example, see "ENTRANCE" in figure 1. Additionally, figure 4 is objected to because it comprises three figures rather than one as labeled in the drawings and described in the description of the drawings. Therefore, it is suggested that the applicant amend the specification and drawings to include three figures such as figures 4, 4a and 4b.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for

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consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

The abstract of the disclosure is objected to because "[a]n improved" on line 1 is unnecessary and therefore should be deleted. On line 3, "impact" is confusing since it is unclear what two elements are impacting one another. Correction is required. See MPEP § 608.01(b).

The disclosure is objected to because pages 6-8 are not currently in the case.

Appropriate correction is required.

Claim Objections

Claims 1-4 are objected to because they fail to begin with a capital letter.

Therefore, it is suggested that the applicant change recitations such as "a" on line 1 of claim 1 to --A--. Additionally, claims 1 and 2 are objected to because they fail to end with a period. Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-4 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Recitations such as "the barrier" on line 2 of claim 1 and "the protected side of the barrier" on lines 9-10 of claim 1 render the claims indefinite because they lack antecedent basis. Recitations such as "through or along" on line 4 of claim 1 render the claims indefinite because it is unclear which one of the two non-equivalent alternatives the applicant is attempting to positively set forth. Recitations such as "means to" on line 5 of claim 1 render the claims indefinite because it is unclear if the applicant means to invoke 35 USC 112 6th paragraph or not. Recitations such as "preventing cutting forces on the cable member" on line 6 of claim 1 render the claims indefinite because it is unclear how a bend can prevent cutting forces on the cable in the middle of the upper portion of the cable as shown in figure 1. Recitations such as "the cable" on lines 6-7 of

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claim 1 render the claims indefinite because it is unclear if the applicant is referring the cable member or is attempting to set forth a cable in addition to the cable member set forth above. Recitations such as "or more" on line 9 of claim 1 render the claims indefinite because it is unclear how more than two upright members can be utilized. Recitations such as "stopping means" on line 10 of claim 1 render the claims indefinite because it is unclear if the applicant is referring to the stopping means as set forth above or is attempting to set forth another stopping means in addition to the one set forth above. Recitations such as "either end" on line 2 of claim 2 render the claims indefinite because it is unclear if the applicant is setting forth bends at both ends of the structural member or is attempting to set forth one bend at either one of the ends of the structural member. Recitations such as "exits in the direction of the bends" on line 3 of claim 2 render the claims indefinite because it is unclear what the applicant is attempting to set forth.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3 and 4, as best understood by the examiner, are rejected under 35 U.S.C. 102(b) as being anticipated by Fischer et al. '629. Fischer et al. '629 discloses a barrier reinforcement comprising one or more stopping assemblies (not numbered, but

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shown in figure 6) attachable to the barrier 60 to be reinforced, each comprising a flexible cable member 64 passing through or along an elongated structural member 62 with means (not numbered, but comprising the length of the structural member) to distribute loading and prevent cutting forces on the cable member when tension is applied to the cable, passive catching means 18 to catch a stopping means (not numbered, but comprising the loop of the cable as shown in figure 2), and two or more anchored and reinforced upright members 10 on the protected side of the barrier, each having one or more stopping means 16 to catch said assembly when the barrier is impacted, a structural member 46 with positioning means 52.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fischer et al. '629 as applied to claims 1, 3 and 4 above, and further in view of Gelfand et al. Gelfand et al. discloses a barrier reinforcement 138 comprising smooth bends at both ends of the gate as shown in figure 2C.

It would have been obvious to one of ordinary skill in the art to provide Fischer et al. '629 with bends, as taught by Gelfand et al., to better capture an automobile.


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The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Fischer et al. '816, Terio, Thommen, Gibbs et al., Hirsh, Dickinson '653 and '869, Sawyer '726 and '649, and Barrett et al. are cited for disclosing a reinforcing means for a gate or fence.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory J. Strimbu whose telephone number is 571-272-6836. The examiner can normally be reached on Monday through Friday 8:00 to 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on 571-272-6867. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Gregory J. Strimbu
Primary Examiner
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May 24, 2005